

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

March 8, 2011

Chief Jim Maher
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Randy Wayne Mullins on March 30, 2010, by Escondido Police Officer Brandon Byler; Escondido Police Department Case No. 10-05310; DA Special Operations Case No. 10-025PS; Deputy District Attorney assigned: Paul Azevedo

Dear Chief Maher:

We have reviewed the reports and materials compiled by your department's Homicide Detail concerning the fatal shooting of Mr. Randy Mullins by Officer Brandon Byler on March 30, 2010. A District Attorney Investigator responded to the scene and was briefed by your investigators. The investigation was presented to our office for review on January 12, 2011.

Persons Involved

Mr. Randy Mullins was twenty-five years old and lived with his wife in an apartment in the 300 block of West 10th Avenue in Escondido. At the time of the shooting, he was armed with an unloaded, Marlin brand, twelve gauge pump shotgun.

Escondido Police Officer Brandon Byler was in full uniform, assigned to patrol duties and armed with a Glock .40 caliber semi-automatic pistol.

Shooting Incident

On March 30, 2010, at 2:57 a.m., uniformed Escondido Police Officers Brandon Byler and Jared Lunt were dispatched to a domestic disturbance at a home in the 300 block of West 10th Avenue. When the officers arrived, they met the calling party who pointed out to them the home where the disturbance was taking place. The officers heard a man yelling and a woman crying. Officer Lunt went to the front door and knocked. Officer Byler heard Lunt announce their presence. Officer Lunt then stepped back and away from the front door. When Officer Lunt approached the door a second time, he heard the sound of a shotgun being racked inside the home.

Seconds later Mr. Mullins opened the door while armed with a twelve gauge pump shotgun. Officer Lunt moved backwards away from the door and ran for cover while yelling to Officer Byler, "*He's got a shotgun!*" When Mr. Mullins leveled the shotgun at Officer Lunt, Officer Byler, who was standing on the opposite side of the door, reached around and grabbed the barrel of the shotgun with his left hand. Officer Byler and Mr. Mullins began struggling over control of the weapon. During the struggle for the gun, Officer Byler drew his handgun with his right hand and began firing at Mr. Mullins. Officer Byler continued firing until he was able to physically take the shotgun away from Mr. Mullins. Mr. Mullins was struck by the gunfire, released his grip on the shotgun and fell backward onto the floor. Mr. Mullins died at the scene.

Investigation

The crime scene was secured and an investigation conducted. The investigation revealed Officer Byler fired sixteen times, thirteen shots struck Mr. Mullins. Sixteen expended .40 caliber shell casings were recovered at the scene and all were located in areas consistent with Officer Byler's stated firing position. The weapon Mr. Mullins was armed with, an unloaded Marlin brand twelve gauge pump shotgun was recovered at the scene. Damage to the front door indicated the barrel of the shotgun struck the door during the struggle. Found inside the home were empty Budweiser beer cans, empty Sangria and tequila bottles and four sandwich bags containing over six ounces of marijuana. Mrs. Mullins had fresh scratches on her chest and arm that were photographed.

After the shooting the police interviewed neighbors. One party told police she heard the woman crying and screaming. When the police arrived, this person heard the police knock on the door. She then heard an officer say, "Put down the gun!" twice, and heard shots fired.

The 911 call and police radio transmissions were reviewed in detail. The 911 caller said he heard a male and female arguing. He called back a second time saying he heard things breaking inside the home. While standing at the front door, Officer Lunt radioed he heard a shotgun being racked. Twelve seconds later Officer Lunt radioed shots had been fired.

Mrs. Mullins' Statement

Mr. Mullins' wife was interviewed. She said her husband had tequila that night with dinner. Later they both went together to a local bar. They returned home at about one o'clock in the morning. Mrs. Mullins said her husband took his shotgun out of the gun safe and was talking to her while showing her how to load and unload the shotgun. She denied arguing with her husband that night. She said her husband was never standing by the front door and was getting ready to put the gun back in the safe when the police opened the door and shot him. She said her husband did not open the door and never pointed the gun. She said the scratches on her body were from playing with her dog and a scar from a long ago.

Officer Byler's Statement

Officer Byler provided investigators with a voluntary and recorded statement. Upon arriving at the scene, Officer Byler could hear a male subject yelling. He described it as "*loud, angry, furious yelling and screaming.*" After Officers Byler and Lunt contacted the reporting party,

they approached the home and the yelling stopped. After waiting a short time, Officer Lunt knocked on the door. Officer Byler said he was standing off to the side when he saw Officer Lunt run away from the doorway and dive for cover while yelling, "He's got a shotgun!" Officer Byler then saw a man standing in the doorway holding a shotgun. When the man leveled the shotgun and aimed it toward Officer Lunt, Officer Byler said he reached around and grabbed the shotgun by the barrel end. As they fought and wrestled over control of the shotgun, the man tried wrenching and twisting the gun away. Officer Byler said he drew his handgun and fired until he had control of the shotgun and the man fell to the floor.

Officer Byler said, *"I was in struggle for my life and I remember fighting with him with the shotgun. I remember him bringing the shotgun down to get a bead on Jared...and there's no doubt in my mind that, I felt that, if I had been a second too late that it would have been a coin flip and that round would have went off and it may or may not have hit Jared and then he could have turned it on me because I was standing right there in front of him and, ...there was no other course of action for me in, in my mind."*

Autopsy

Mr. Mullins' autopsy was conducted by the San Diego County Chief Medical Examiner Glenn N. Wagner on March 31, 2010. The Medical Examiner determined Mr. Mullins sustained thirteen gunshot wounds to the torso. Fine stippling was associated with a cluster of four of the wounds. Toxicological examinations revealed Mr. Mullins' blood alcohol level was .21%, and he also had marijuana in his system.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to affect an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S.

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Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

“[P]olice may use only such force as is objectively reasonable under the circumstances. An officer’s use of deadly force is reasonable only if ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ All determinations of unreasonable force ‘must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.’” [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.


Conclusions

In this case, uniformed Escondido Police Officers Brandon Byler and Jared Lunt were dispatched to a domestic disturbance. The caller reported hearing a man and woman arguing, things breaking inside the home and pointed out the home to the officers. Both officers heard a man yelling at a woman who was crying inside the home. After the officers announced their presence at the door, Mr. Mullins, who was intoxicated, opened the door while armed with a shotgun. When Mr. Mullins leveled and pointed the shotgun toward Officer Lunt, Officer Byler grabbed the shotgun by the barrel. While fighting over control of the gun, Officer Byler drew his handgun and fired at Mr. Mullins who was struck by the gunfire and died at the scene.

In this case, Officer Byler fired at Mr. Mullins in self-defense as well as in defense of Officer Lunt. Officer Byler’s use of deadly force under these circumstances is therefore reasonable and he bears no criminal liability for his actions.

A copy of this letter along with the materials submitted for our review will be retained in our files.

Sincerely,



BONNIE M. DUMANIS

District Attorney
San Diego County

BMD;jh